

GENERAL SESSION
HAZARDOUS WASTE MANAGEMENT COMMISSION (HWMC)
June 15, 2006
9:00 A.M.
1738 East Elm
Bennett Springs Conference Room
Jefferson City, MO 65101

(NOTE: Portions of the cassette tape used to assist in developing this summary were unclear due to a malfunction.)

COMMISSIONERS PRESENT

Patrick Gleason, Chairman
Norella Huggins
Derrick Standley
Ben Kessler
Susan Williamson
Jamie Frakes

CALL TO ORDER

Patrick Gleason, HWMC Chairman, called the General Session to order at 9:00 A.M.

EXECUTIVE SESSION

An Executive Session was held at 8:45 a.m.

APPROVAL OF MINUTES

Motion was made by Commissioner Kessler and seconded by Commissioner Williamson to approve the April 20, 2006, General Session Minutes.

Motion carried.

Chairman Gleason noted that an amendment to the agenda needed to be made. The department director, Doyle Childers, would be attending the meeting at 1:15 and needed to be added to the agenda.

Motion was made by Commissioner Standley and seconded by Commissioner Huggins to amend the agenda.

Motion carried.

Special recognition was given to Rob Morrison for his years of service to the Hazardous Waste Management Commission and the Hazardous Waste Program.

CHAIRMAN AND VICE-CHAIRMAN ELECTION

Patrick Gleason was nominated as Chairman by Commissioner Kessler and seconded by Commissioner Standley.

Motion carried.

Tim Warren was nominated as Vice-Chairman by Commissioner Huggins and seconded by Commissioner Standley.

Motion carried.

Motion was made to accept the nominations by Commissioner Frakes and seconded by Commissioner Kessler.

Motion carried.

REAPPOINTMENT

Robert Geller, HWP Director, informed the Commission that Commissioner Huggins was reappointed for another four-year term effective April 5, 2006 through April 3, 2010.

PUBLIC HEARING ON PROPOSED AMENDMENTS TO INCORPORATE BY REFERENCE FEDERAL REGULATIONS

Chairman Gleason read the public hearing opening statement.

Tim Eiken, HWP Rules Coordinator, presented testimony on the proposed rules to incorporate by reference changes to the Code of Federal Regulations adopted between July 1, 2000, and July 1, 2004.

The purpose of the public hearing was to provide the department and the public the opportunity to present testimony and to comment on proposed rules.

Commissioner Huggins, Mr. Roger Walker, REGFORM, Mr. Todd Houts, University of Missouri-Columbia, and Chairman Gleason made comments regarding the proposed rules.

Motion was made to close the public hearing by Commissioner Huggins and seconded by Commissioner Williamson.

Motion carried.

NOTE: A transcript of this hearing is available for review at the office of the Hazardous Waste Management Commission, 1738 E. Elm Street, Jefferson City, Missouri.

FINANCIAL RESPONSIBILITY (FR) INITIATIVE UPDATES

Dan Massey, Attorney General's Office (AGO), presented information regarding multiple FR cases previously referred to the AGO. The numbers he shared are as follows: 66 referrals (14 were already at the AGO, 41 referred in August '05 and 11 referred since) with 35 Settlement Agreements and Judgments, nine pending lawsuits (i.e., petition filed and we are in litigation), and four pending Settlement Agreements or Consent Judgements for a total of \$205,651 in penalties. The AGO also shut down five stations for anywhere from one day to about four days. Mr. Massey responded to questions from the Commissioners regarding temporary closure, penalties, number of tanks and stations, and legal fees.

REQUEST TO REFER ANTIOCH BP TO THE AGO IN ORDER TO COMPEL COMPLIANCE AND PURSUE OR NEGOTIATE A CIVIL PENALTY

Mr. Angela Oravetz, Compliance/Enforcement Section, gave a brief summary of the "fast track" method of processing FR cases.

Ms. Oravetz gave a brief history and updated information on the status of Antioch BP's application to the Petroleum Storage Tank Insurance Fund (PSTIF). The facility does not currently have an insurance policy.

Ms. Carol Eighmey, PSTIF, noted the application and the premium had been returned to the facility.

Motion was made by Commissioner Kessler and seconded by Commissioner Williamson to refer Antioch BP to the AGO to compel compliance and pursue or negotiate a civil penalty.

Motion carried.

REQUEST TO REFER MOBIL 05-K5Q TO THE AGO IN ORDER TO COMPEL COMPLIANCE AND PURSUE OR NEGOTIATE A CIVIL PENALTY

Ms. Angela Oravetz, Compliance/Enforcement Section, gave a brief history and updated information on the status of the Mobil 05-K5Q's referral and answered questions from Commissioner Kessler regarding the time lapse since their application for policy from PSTIF and the noted computer problems. Commissioner Huggins also inquired about the amount of time the facility has been without FR. Ms. Oravetz stated that she did not have that information at hand.

Motion was made by Commissioner Williamson and seconded by Commissioner Kessler to refer Mobil 05-K5Q to the AGO to compel compliance and pursue or negotiate a civil penalty.

Motion carried.

REQUEST TO REFER SRI LARMI INCORPORATED D.B.A. FAST TRIP TO THE AGO IN ORDER TO COMPEL COMPLIANCE AND PURSUE OR NEGOTIATE A CIVIL PENALTY

Ms. Angela Oravetz, Compliance/Enforcement Section, stated that the facility had come into compliance and the department is not requesting referral at this time.

REQUEST TO REFER LESLIE DEPOT TO THE AGO IN ORDER TO COMPEL COMPLIANCE AND PURSUE OR NEGOTIATE A CIVIL PENALTY

Ms. Angela Oravetz, Compliance/Enforcement Section, gave a brief history and updated information regarding the facility's violations. Ms. Oravetz responded to questions regarding the use of certified mail verses registered mail.

Motion was made by Commissioner Huggins and seconded by Commissioner Williamson to refer Leslie Depot to the AGO to compel compliance and pursue or negotiate a civil penalty.

Motion carried.

REQUEST TO REFER LEE'S DOWNTOWN GARAGE TO THE AGO IN ORDER TO COMPEL COMPLIANCE AND PURSUE OR NEGOTIATE A CIVIL PENALTY

Ms. Heather Peters, Compliance/Enforcement Section, gave a brief history and updated information regarding the facility. Ms. Peters responded to questions from the Commissioners regarding tank removal, time lapse of owner's response to letters, and the status of the facility's operation.

Motion was made by Commissioner Williamson and seconded by Commissioner Kessler to refer Lee's Downtown Garage to the AGO to compel compliance and pursue or negotiate a civil penalty.

Motion carried.

BREAK

REQUEST TO REFER FIVE RUSSELL OIL COMPANY FACILITIES TO THE AGO IN ORDER TO COMPEL COMPLIANCE AND PURSUE OR NEGOTIATE A CIVIL PENALTY

Ms. Heather Peters, Compliance/Enforcement Section, gave a brief history and updated information regarding the five Russell Oil Company facilities located in Dunklin and Pemiscott counties. The facilities are in temporary closure. The referral is due to violations and to ensure that the department has legal representation should any financial or bankruptcy issues arise after a change of ownership.

Commissioner Kessler inquired about the status of other Russell Oil sites. Ms. Peters noted that the other sites are not current enforcement cases.

Ms. Shelley Woods, discussed briefly with the Commissioners regarding "lis pendens" or "litigation pending" and title searches.

Ms. Aimee Davenport, Lathrop and Gage, on behalf of Business Loan Express, requested a 30-day delay in the referral to the AGO. She responded to questions from the Commissioners regarding the potential sale/foreclosure of the properties.

Motion was made to delay referral until the end of the month (June 30).

Motion did not pass.

Motion was made by Commissioner Huggins and seconded by Commissioner Williamson to refer the five Russell Oil Company facilities to the AGO to compel compliance and pursue or negotiate a civil penalty.

Commissioner Kessler and Commissioner Frakes opposed.

Commissioner Frakes asked for clarification regarding Business Loan Express' intentions. Ms. Davenport responded that their intentions were not to delay legal counsel's participation, but to give the Business Loan Express an opportunity to negotiate with the department prior to legal action.

Ms. Peters reiterated that the department is asking for tank closure and site assessment. If a lien holder did the tank removal, they are not the responsible party, thus no penalties assessed. She also added that the department and the AGO work well together. It is not unusual for a non-responsible party remove any tank for the financial benefit of the property.

Motion was made by Commissioner Huggins and seconded by Commissioner Williamson to refer the five Russell Oil Company facilities to the AGO to compel compliance and pursue or negotiate a civil penalty.

Motion carried.

Action item: Commissioner Standley requested clarification of the "gray zone" for lien holders during a future training session.

REQUEST TO REFER S AND H PARKING TO THE AGO IN ORDER TO COMPEL COMPLIANCE AND PURSUE OR NEGOTIATE A CIVIL PENALTY

Ms. Heather Peters, Compliance/Enforcement Section, gave a brief history and updated information regarding the facility's non-compliance issues.

Motion was made by Commissioner Standley and seconded by Commissioner Williamson to refer S and H Parking to the AGO to compel compliance and pursue or negotiate a civil penalty.

Motion carried.

REMOVAL OF THE KING ADHESIVES SITE FROM THE REGISTRY OF CONFIRMED OR ABANDONED HAZARDOUS WASTE SITES

Ms. Shelley Woods, AGO, updated the Commission on the status of the appeal. Based on a reassessment, the site has been removed from the registry and the notice of removal has been filed. Commissioner Huggins asked Mr. Geller if this was one of the first successful uses of the Missouri Risk-based Corrective Action (MRBCA) guidance. Mr. Geller stated that it may not have been the first, but as it relates to the registry it is no longer required to have that institutional control.

DRYCLEANERS EMERGENCY RESPONSE TRUST FUND REFERRALS

Mr. Mike Menneke, Compliance/Enforcement Section, gave a brief history of the DERT Fund and referrals of the Drycleaners that have not registered and paid their surcharges. Legal counsel determined registration and surcharges were required, but the department was unable to take enforcement action against them. A final 30-day notice was mailed June 14, 2006. All facilities not in compliance before the August meeting, a mass referral will be brought to the Commission. Mr. Menneke and Mr. Scott Huckstep, DERT Fund Unit Chief, responded to questions from the Commissioners regarding the number of active facilities, reasons for failure to comply, and the surcharges. Upon referral to the AGO, the fees assessed will be placed in the DERT Fund. In the future, a direct referral will be pursued and brought to the Commission for approval.

Commissioner Standley commented on the greater burden placed on the compliant. Ultimately, the compliant paying for the non-compliant. Mr. Menneke noted that this is the last grace period that will be offered.

E-SCRAP STAKEHOLDERS WORK GROUP UPDATE

Mr. Mike Menneke, Compliance/Enforcement Section, gave a brief summary of the E-Scrap Stakeholders Work Group meeting held June 14, 2006.

Copies of the presentation materials were distributed to the Commissioners and made available to audience members.

A broad definition of “E-Scrap” was developed that included anything that contains a circuit board, anything that plugs in, anything that runs off a battery. A more focused definition will be created when certification, permitting, or legislation is required.

Three subgroups were developed: certification/permitting/legislation, funding/financial issues, and education/information.

Commissioner Kessler inquired about the product of the scrap. Mr. Menneke noted the many markets now available. Commissioner Standley expanded on the disposal and mass illegal dumping of E-scrap without a proper regulatory framework in place.

Mr. Geller added that the goal is to have a plan that is environmentally sensitive, promoting recycling/reusing.

Commissioner Kessler noted that the manufacturer should pay for their share. Mr. Geller stated that the manufacturers are involved in the stakeholder group. Further discussion ensued on manufacturers, demanufacturers, recycling industries, etc.

FINDING OF NECESSITY FOR A PROCEDURAL RULE FOR HANDLING APPEALS TO THE ADMINISTRATIVE HEARING COMMISSION

Tim Eiken, HWP Rule Coordinator, provided a brief history of the rule development and status of the rule.

Commissioner Huggins gave additional historical background on the rule development.

Motion was made by Commissioner Huggins and seconded by Commissioner Standley to adopt the Finding of Necessity for the new rule to establish a procedural rule for handling appeals to the Administrative Hearing Commission is necessary to carry out the commission's rulemaking authority and that the department proceed with the filing of the proposed rule package with the Secretary of State.

BREAK

RULEMAKING UPDATE

Tim Eiken, HWP Rule Coordinator, provided an update to the Commissioners regarding pending rulemakings:

- Authorization Package
 - Approved by EPA, Region VII
 - Federal Register in May
 - Currently on Public Notice

Chairman Gleason inquired about the more aggressive attitude toward rulemaking changes. Mr. Eiken provided information regarding the HWP Rulemaking Committee.

MONTHLY REPORTS

Mr. Geller noted that the monthly reports were included in the packet.

PUBLIC INQUIRIES OR ISSUES

No requests received.

Commissioner Kessler inquired about the reason the Commissioners are no longer shown on the Organization Charts.

OTHER BUSINESS

Variance

Mr. Robert Geller provided information regarding a variance received from Holcim (US) Inc./EnergisLLC. More information will be provided at a later time.

Missouri Risk-Based Corrective Action (MRBCA)

Mr. Geller updated the Commission on the status of the MRBCA guidance document. He commended the stakeholder group for their effort. The next phase is the rulemaking process. A parallel rulemaking process will be followed for the Tanks RBCA and the rule for everything not Tanks. Mr. Geller provided a presentation on the MRBCA process.

Commissioner Huggins commended Mr. Geller for his part in finalizing the MRBCA process. She also commended Mr. Roger Walker for his contributions.

Budget

Ms. Andrea Kliethermes, Budget and Planning Section Chief, provided follow-up responses to several questions from the previous meeting regarding appropriations versus expenditures, file room plan, battery fee update, and collection of interest and penalties specific to the Hazardous Waste Fund.

PSTIF

Mr. Geller distributed a letter from Doyle Childers to the PSTIF board regarding the negotiations between the department and the PSTIF board. Commissioner Huggins reminded the Commission that authorization for a letter from the Commission to the PSTIF board occurred in January. Thus, due to the closure of negotiations between the department and the board, it seems appropriate for the Chairman to send the letter.

Chairman Gleason asked that PSTIF issues be a regular agenda item in the future.

FUTURE MEETINGS

Chairman Gleason noted that the next HWMC meeting is scheduled for August 17, 2006, in Jefferson City.

BREAK

SPECIAL SPEAKER

Introductions were made between Mr. Childers and the Commissioners.

Doyle Childers, Department Director, attended the meeting and discussed the “town hall” meetings he has attended and topics of discussion, which include internet permitting, online manuals (permits, inspections, etc.) Ombudsmen Program, reorganization of the DNR webpages, compliance assistance, satellite offices, and innovative alternatives that work and are cost effective. He also discussed the situation of staff at retirement age, professional development, cross-training, staff distribution around the state, and the complexity of the agency. Commissioner Frakes inquired about the collection of information from staff at retirement age. Mr. Childers responded that staff are working on compiling information. There was discussion on hiring part-time staff versus contractors, increased wages, and merit system challenges. A 40-year plan is being put into effect for recruitment and retention. Information will be shared about the Department beginning with 4th – 5th grade students through college level that may be interested in working with the department. Also, hiring retirees part-time is being considered.

Mr. Childers discussed the B-52 and B-2 analogy of the department. Commissioner Standley noted that the analogy is well-known around the state. Commissioner Williamson commended Mr. Childers on the Ombudsmen Program. Director Childers indication one of the challenges has been to convince the Ombudsmen that they are not to solve the problems, only report them. There is direct communication between the Director’s Office and the field.

Chairman Gleason asked if the Commission can do anything to assist the department in resolving the PSTIF (tank inspection) situation. Mr. Childers stated that the department is working with legal staff to see what can be done. He agreed that it is not advantageous to have EPA do the inspections. Two issues remain: an insurance company can not be the regulatory agency and funding of activities. Commissioner Williamson inquired about what EPA can do to resolve the issue. Mr. Childers noted that the EPA is doing inspections, but he doesn't know what their final action will be.

Mr. Geller thanked Mr. Childers for taking the time to attend the meeting and invited him to return at any time.

ADJOURNMENT

Motion to adjourn was made by Commissioner Williamson and seconded by Commissioner Standley.

Motion carried and the meeting was adjourned.

Respectfully Submitted,

Judith Clark, Commission Secretary

APPROVED

Patrick Gleason, Chairman

Date